

HAROLD & IRENE KYLLONEN

IBLA 74-114

Decided June 26, 1974

Appeal from decision of the Montana State Office, Bureau of Land Management, allowing application for renewal of small tract lease (Montana 01344) subject to payment of increased rental and execution of stipulations.

Affirmed.

Rules of Practice: Appeals: Burden of Proof – Rules of Practice: Evidence –Small Tract Act: Appraisals

Where an applicant for a small tract lease contends that the rental set by the Bureau of Land Management appraisal is excessive, the burden is upon applicant to prove by substantial and positive evidence that the appraisal is in error.

Small Tract Act: Renewal of Lease

The filing of an application to lease under the Small Tract Act does not vest any legal right or interest in the applicant, for it is within the discretion of the Secretary whether or not to exercise his authority to lease the land.

Small Tract Act: Renewal of Lease

Where the Bureau of Land Management properly determines that land which had been embraced by a small tract lease is well located and ideally suited for public use as a recreational area, it may limit the lease to a nonrenewable five-year term.

Small Tract Act: Classification – Small Tract Act: Sales

Before land classified for lease may be sold under the Small Tract Act, it is necessary that the land be classified for sale in compliance with the provisions of 43 CFR Part 2400.

APPEARANCES: Harold and Irene Kyllonen, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Harold and Irene Kyllonen of Butte, Montana, have appealed from the decision of the Montana State Office, Bureau of Land Management, dated October 1, 1973, allowing an application for renewal of a lease filed pursuant to the Small Tract Act, as amended, 43 U.S.C. §§ 682(a) - 682(e) (1970), subject to payment of rental increased to \$195 per year and execution of special stipulations. Appellants contend the rent is too high and they oppose inclusion of the stipulation that the lease is not renewable after the five-year period beginning April 1, 1973. They also reiterate their interest in purchasing the property.

The tract in question contains 2.5 acres and is situated in Beaverhead County, Montana, approximately seven miles northwest of Wise River, Montana. The land is accessible from State Highway #43, by 1/8 mile of fair gravel road. The land has been classified for lease only under the Small Tract Act, supra, and 43 CFR 2731.2.

Mrs. Lillian Thomas, who had formerly leased the tract, requested that the lease be assigned to appellants who were purchasing her cabin. The Bureau approved the assignment on September 27, 1961. The expiration of the date of the lease was March 31, 1966. Appellants applied for a renewal of their lease which the Bureau approved

for a seven-year period. Appellants made several attempts to purchase the land but the Bureau informed them that the tract in question had been classified for lease only. On March 2, 1973, appellants filed formal application for renewal of their lease.

In its field examination report of February 14, 1973, the Bureau noted the topography of the site, stating that the eastern half is situated on the bottom land along Tie Creek, while the western half is situated on a very steep valley slide. The entire tract has a good cover of lodgepole pine and douglas fir trees on it. The economy of the area is based on livestock ranching, with some tourism, mining, and timber production.

Considering the need of the tract for recreational purposes, the Bureau recommended the lease be issued for a nonrenewable term of five years. Such a period was designed to allow appellants time to remove their present improvements on the tract.

In its environmental analysis of the area the Bureau noted that the tract is part of a large block of National Resource land containing approximately 2,160 acres, located along the northern end of the Pioneer mountain range. The area is aesthetically pleasing. Because of proximity to Butte, Anaconda, and Dillon, there is considerable recreational

use of the area – fishing, hunting, ^{1/} skiing, and year-round homesites. In the near future, Highway #15 will be completed which will pass 20 miles to the east, linking Butte and Dillon. A better highway will increase the recreational use and create further demands for camp sites along this stretch of the Big Hole River.

In its appraisal dated August 27, 1973, the Bureau compared the property with five sales in the area. Due to the high demand for recreational property, land values have increased rapidly particularly during the past few years, and a 300 percent increase between 1963 and 1970 is typical for the area.

Appellants contend that the rent is too high for land that is used only as a recreational cabin site, covered with snow for five months of the year and located on the north side of a large hill without enough sunshine for crops. They state that the rent has been raised from \$10 a year in 1961 to \$35 a year in 1968 and finally to \$195 a year in 1972. Mr. Kyllonen is paralyzed and confined to a wheel chair. He explains that he is living on a fixed income and if the rent is raised, he will not be able to afford it.

^{1/} A 1967 appraisal noted: "There is excellent big game hunting in this neighborhood with some very good trout fishing on the streams. The Big Hole River which runs through this neighborhood is a nationally known Blue Ribbon trout stream. Recreation and tourism contribute a great deal to the economy of this neighborhood."

We find that the rental of the land set by the Bureau properly reflects a reasonable estimate of the value of the property. In their statement of reasons, appellants do not contest any specific part of the appraisal report, nor do they show that the report failed to meet the Bureau's standards. If an applicant contends that the rental is erroneous, the burden is upon him to prove by substantial and positive evidence that the appraisal is in error. See Nick Lambros, 10 IBLA 135 (1973). Appellants have not met this burden. While the rental has been substantially increased, we do not find it excessive compared to the estimated \$2,500 value of the land.

Appellants urge that the land is of no use for anything else and they should be allowed to renew the lease every five years. It should be clear at the outset that appellants are not entitled as a matter of right to the land for which they have applied. It is within the discretion of the Secretary whether or not to exercise his authority to lease under the Act. 43 U.S.C. § 682(a). The filing of a small tract application to lease in compliance with the regulations of the Department does not vest in the applicant any legal right or interest in the land described by the application other than a right to have the application considered. Ralph S. Hoeming, 10 IBLA 203 (1973).

We cannot agree with appellant's contention that the land is not valuable for recreation purposes. Departmental regulation 43 CFR 2730.0-2(a) states that the purpose of the Small Tract Act is

* * * to promote the beneficial utilization of the public lands subject to the terms thereof, and at the same time to safeguard the public interest in the lands * * *. [S]mall tract sites will be considered in the light of their effect upon the conservation of natural resources and upon the communities or area involved * * *. Lands will not be leased or sold, for example, which would lead to private ownership or control of scenic attractions, or water resources, or other areas that should be kept open to public use. * * *

The Bureau's field report demonstrates that the tract is well located and ideally suited for public use. The Bureau has determined that there is a growing need for camping facilities in the area and that this site is located on a suitable flat. That has not been controverted by appellants.

In view of the recreational potential of the tract, the Bureau's determination is not unreasonable or arbitrary and will not be disturbed. Ralph S. Hoerning, supra. The other arguments advanced by the appellants have been examined but do not warrant reversal of the Bureau's decision. As to appellants' statement that they desire to purchase the land,

before land classified for lease can be sold it must be classified for sale 2/ in compliance with the provisions of 43 CFR Part 2450.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joseph W. Goss
Administrative Judge

We concur.

Anne Poindexter Lewis
Administrative Judge

Martin Ritvo
Administrative Judge

2/ Because of the Bureau's program of recreational development in the area, it is questionable whether the land would be reclassified for sale.

